IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Sanjiv Arora Vs. State of Rajasthan

S.B.CR.MISC. PETITION NO.945/2004

against the order dt.20.2.2004 passed by Chief Judicial Magistrate, Sri Ganganagar in Cr.Case No.53/2004

DATE OF ORDER :: August 02, 2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr.M.K.Garg for the petitioner.

Mr.Ashok Upadhyaya, P.P. for the State.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order dt. 20.2.2004 passed by Chief Judicial Magistrate, Sri Ganganagar (for short 'the trial court' hereinafter) on a complaint filed against the petitioner by Additional Sessions Judge (Fast Track), Sri Ganganagar under section 193 I.P.C. Aggrieved by the order impugned as also the filing of the complaint against the petitioner, the petitioner has filed the instant cr.misc. petition.

I have heard learned counsel for the parties. Carefully gone through the complaint as also the order impugned taking cognizance.

Facts giving rise to the instant cr. misc. petition are that the petitioner lodged a first information report Ex.P/7 to the SHO, Police Station, Sadar, Sri Ganganagar on 15.11.2001 alleging therein that in a factory, fire was put to D.G.Set Room for which according to him Mahadev Bahadur, who was working in the factory of Jaidev Jindal is responsible. After usual investigation, the police did not file the challan against Mahadev Bahadur, however, the challan has been filed against other persons namely Ved Prakash, Sudhir Kumar, Mahendra Pratap and Jaidev for the offences under sections 120-B and 436 I.P.C. The matter was committed to the Court of Sessions as the offence under section 436 I.P.C. is exclusively triable by the Court of Sessions. The same was transferred to the Addl. Sessions Judge (Fast Track), Sri Ganganagar for trial. The petitioner was one of the prosecution witnesses. He denied the statement marked 'A' to 'B' having been made in Ex.P/7, which relates to the allegation against Mahadev Bahadur that he was not accused in the case as the police did not file the challan against him.

By judgment and order dt. 15.11.2003 in Sessions Case No.39/2003, learned Additional Sessions Judge (Fast Track), Sri Ganganagar acquitted all the four accused persons of the charges. However, directed to initiate the proceedings under section 193 I.P.C. against the present petitioner for making a false statement i.e. perjury and filed the complaint. On that complaint, the trial court took the cognizance and issued the process. Hence, this petition.

It is contended by learned counsel for the petitioner that no preliminary inquiry as contemplated under section 340 Cr.P.C. was held prior to filing the complaint.

Section 340 Cr.P.C. provides thus:

> "**340. Procedure in cases mentioned in Sec.195.--(1)** When, upon an application made to it in this behalf otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Cl.(b) of sub-section (1) of Sec.195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary record a finding to that effect: make a complaint thereof in writing: send it to a Magistrate of the first class having

jurisdiction."

Section 195(1)(b)(i) Cr.P.C. provides that no court shall take cognizance of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely Sec.s 193 to 196 (both inclusive), 199, 200, 205 to 211 (bot inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

Learned counsel for the petitioner has relied on a decision of Hon'ble Supreme Court in K.T.M.S. Mohd. & Anr. Vs. Union of India, 1992 SCC (Cri) 572, wherein the Hon'ble Supreme Court while considering the provisions of section 340 Cr.P.C. observed as under:

> "In this context, reference may be made to Section 340 of the Code of Criminal Procedure under Chapter XXVI under the heading "Provisions as to Offences Affecting the Administration of Justice". This section confers an inherent power on a court to make a complaint in respect of an offence committed in or in relation to a proceeding in that court, or as the case may be, in respect of a document produced or given in

> evidence in a proceeding in that court, if that court is of opinion that it is expedient in the interest of justice that an enquiry should be made into an offence referred to in clause (b) of sub-section (1) of Section 195 and authorises such court to hold preliminary enquiry as it thinks necessary and then make a complaint thereof in writing after recording a finding to that effect as contemplated under sub-section (1) of section 340. The words "in or in relation to a proceeding in that court" show that the court which can take action under this section is only the court operating within the definition of Section 195(3) before which or in relation to whose proceeding the offence has been committed. There is a word of caution inbuilt in that provision itself that the action to be taken should be expedient in the interest of justice. Therefore, it is incumbent that the power given by Section 340 of the Code should be used with utmost care and after due consideration."

The Apex Court held that two per-conditions are that the materials produced before the high Court make out a prima facie case for a complaint and secondly, that it is expedient in the interest of justice to permit the prosecution under Section 193 I.P.C. It was further held that the provisions of section 340 Cr.P.C. are alluded only for the purpose of showing that necessary care and caution are to be taken before initiating a criminal proceeding for perjury against the deponent of

contradictory statements in a judicial proceeding. It was held that mere fact that a deponent has made contradictory statements at two different stages in a judicial proceeding is not by itself always sufficient to justify a prosecution for perjury under Section 193 IPC but it must be established that the deponent has intentionally given a false statement in any stage of the judicial proceeding or fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. Further, such a prosecution for perjury should be taken only if it is expedient in the interest of justice.

In Re: A.K.Padmanabhan, Ex.M.L.A., 1992 (1) (CRIMES) 653, Kerala High Court while considering the provisions of section 195(1)(b) and 340 Cr.P.C. held that the Magistrate can take cognizance only on the complaint in writing of that court or of any other court, to which that court is subordinate. If a complaint is to be filed, a preliminary enquiry under section 340 Cr.P.C. is a must.

This Court in Sayed Sipte Hussan vs. State of Rajasthan through P.P., 1998(2) R.C.C. 474 held that before taking cognizance no inquiry as contemplated under section 340 Cr.P.C. was held. It was held that fundamental right of the accused-petitioner therein under Article 21 of the Constitution of India

has been infringed and on that premise while allowing the petition under section 482 Cr.P.C., the proceeding initiated against the petitioner therein under section 193 I.P.C. was dropped.

Keeping in view the decision of Hon'ble Supreme Court and when the facts of the instant case have been examined undisputably no preliminary inquiry as contemplated under section 340 Cr.P.C. was held by the Additional Sessions Judge (Fast Track), Sri Ganganagar before filing the complaint against the petitioner for the offence under section 193 I.P.C. in my view the order taking cognizance cannot be sustained and the same is liable to be set aside.

Consequently, the criminal misc. petition is allowed. Order impugned is set aside and the proceeding against the petitioner stands quashed. Stay petition also stands dismissed.

[H.R.PANWAR],J.

m.asif/-